

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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SUNLIGHTEN, INC.,

Case No. 2:20-cv-00127-JAD-EJY

Plaintiff,

V.

## ORDER

## FINNMARK DESIGNS, INC.,

Defendant.

10 Before the Court is Defendant Finnmark Designs, LLC’s (“Defendant”) Memorandum of  
11 Fees in Support of Award of Sanctions Under Fed. R. Civ. P. 37 (“Memorandum”) (ECF No. 51).  
12 Plaintiff Sunlighten, Inc. filed a Response to Defendant’s Memorandum of Fees in Support of Award  
13 of Sanctions Under Fed. R. Civ. P. 37 (“Response”) (ECF No. 59). The full background leading to  
14 Plaintiff’s Memorandum is found in the Court’s May 4, 2021, Order (EFC No. 49). This background  
15 is not repeated here.

## I. DISCUSSION

#### A. Attorneys' Fees

18        The Court “has a great deal of discretion in determining the reasonableness of the fee and, as  
19        a general rule, [an appellate court] will defer to its determination ... regarding the reasonableness of  
20        the hours claimed by the [movant].” *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 453 (9th  
21        Cir. 2010) (quoting *Gates v. Deukmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992)). When considering  
22        reasonable attorney’s fees, the Court must review the “prevailing market rates in the relevant  
23        community” comparing hourly rates charged by “lawyers of reasonably comparable skill, experience  
24        and reputation.” *Soule v. P.F. Chang’s China Bistro, Inc.*, Case No. 2:18-cv-02239-GMN-GWF,  
25        2019 WL 3416667, at \*1 (D. Nev. July 26, 2019) (quoting *Blum v. Stenson*, 465 U.S. 886, 895-96  
26        n. 11 (1984)). This is a two-step process requiring the Court to first “calculate the lodestar figure by  
27        taking the number of hours reasonably expended on the” motion at issue and multiplying that number  
28        “by a reasonable hourly rate.” *Fischer v. SJP-P.D. Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000) (citing

1        *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)) (internal quotation marks omitted). The second  
2 step requires the Court to consider adjusting the lodestar upward or downward, something done  
3 “only on rare and exceptional occasions, … using a multiplier based on factors not subsumed in the  
4 initial calculation of the lodestar.” *Soule*, 2019 WL 3416667, at \*1 (citing *Van Gerwin v. Guarantee*  
5 *Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000)) (internal brackets removed).

6        Here, Defendant asks the Court to find hourly rates of \$300 for Mr. Gile and \$110 for his  
7 paralegal/law clerk. ECF No. 51 at 3. Plaintiff does not argue that these rates are unreasonable.  
8 Given that Defendant cited multiple examples in cases where this Court allowed similar rates and  
9 Plaintiff did not raise the rates as an issue in the Response, the Court finds these rates to be  
10 reasonable.

11        B.        Time Billed

12        “District courts possess the necessary discretion to adjust the amounts awarded to address  
13 excessive and unnecessary effort expended in a manner not justified by the case.” *Ballen v. City of*  
14 *Redmond*, 466 F.3d 736, 746 (9th Cir. 2006). This includes “time spent reviewing work of other  
15 attorneys as duplicative” (*Melancon v. Harrah’s Entertainment, Inc.*, Case No. 2:08-cv-00212-RCJ-  
16 RJJ, 2010 WL 11639687, at \*4 (D. Nev. Feb. 26, 2010)), as well as entries on time reports that fails  
17 “to delineate what work was performed in each entry” and thus appear duplicative. *American*  
18 *General Life Ins. Co. v. Futrell*, Case No. 2:11-cv-00977-PMP-CWH, 2012 WL 4962997, at\*4 (D.  
19 Nev. Oct. 16, 2012). Ultimately, when reviewing hours claimed by the party to whom fees have  
20 been awarded, the Court may exclude hours arising from overstaffing, duplication, excessiveness or  
21 that are otherwise unnecessary. *See, e.g., Hensley*, 461 U.S. at 433; *see also Cruz v. Alhambra*  
22 *School Dist.*, 601 F.Supp.2d 1183, 1191 (C.D. Cal. 2009). Finally, it is always Plaintiffs’ burden to  
23 establish that the fees they seek are reasonable. *Soule*, 2019 WL 3416667, at \*1 (citing *Camacho v.*  
24 *Bridgeport Fin., Inc.*, 523 F.3d 973, 980 (9th Cir. 2008)).

25        Defendant seeks to recover attorneys’ fees for 42.7 billable hours at the above hourly rates  
26 of \$300 for attorney time and \$110 for paralegal/law clerk time. ECF No. 51-1 at 4. Defendant  
27 provided a detailed list of tasks in Exhibits A and B of the Memorandum. *See* ECF No. 51-1 at 3 to  
28 4, ECF No. 51-2. The Court finds that not all of this time is recoverable. In the prior Order (ECF

1 No. 49), the Court ordered that “Plaintiff shall be required to pay reasonable fees and costs incurred  
2 by Defendant for bringing its Motion to Compel [(ECF No. 36)].” ECF No. 49 at 3. The entries on  
3 December 4, 2020 (review responses to discovery for a total of .6 or \$180.00); December 13, 2020  
4 (email exchange between defense counsel and his paralegal for .2 or \$60.00); December 13, 2020  
5 (review responses to discovery for a total of .5 or \$112.00); and, December 15, 2020 (email to client  
6 for a total of .2 or \$60.00) are not sufficiently related to the Motion to Compel to justify requiring  
7 Plaintiff to pay these fees.

8 Defendant is correct that a party moving for attorneys’ fees may also recover fees for the  
9 time expended in filing a motion for attorneys’ fees. *SOC-SMG, Inc. v. Christian & Timbers, LLC*,  
10 Case No. 3:08-CV-00392-ECR-VPC, 2010 WL 2085076, at \*7 (D. Nev. May 20, 2010) (citing  
11 *Anderson v. Dir., Off. Of Workers Comp. Programs*, 91 F.3d 1322, 1325 (9th Cir. 1996)). However,  
12 the Court also has discretion “to reduce fees-on-fees to the extent of the applicant’s success on the  
13 underlying fees.” *SOC-SMG, Inc.*, 2010 WL 2085076, at \*7 (citing *Thompson v. Gomez*, 45 F.3d  
14 1365, 1368 (9th Cir. 1995)).

15 In determining the final amount of attorneys’ fees owed to Defendant, the Court first removes  
16 all of the above disallowed entries from the calculation. The Court also disallows two entries that  
17 do not contain descriptions, totaling \$210.00. *See* ECF No. 51-2 at 17, 27. This decreases the  
18 amount provided by Defendant by \$622.00, leaving the total amount spent on the Motion to Compel  
19 as \$5,066.00 (as opposed to the Defendant’s calculation of \$5,688.00). This represents  
20 approximately 90% of the Defendant’s request for the underlying fees. Using the fees-on-fees rule  
21 from *Thompson*, the Court reduces the Defendant’s calculation for the value of work on the  
22 Memorandum to \$1,912.50 (as opposed to Defendant’s calculation of \$2,125.00). Adding the value  
23 of the work on the Motion to Compel to the value of the work on the Memorandum, the Court arrives  
24 at a grand total of \$6,978.50.

25       C.     Party Responsible to Pay Sanction

26       Defendant requests the Court hold Plaintiff and Plaintiff’s counsel jointly and severally liable  
27 for the attorneys’ fees award. ECF No. 51 at 8. Rule 37(a)(5) sanctions may be issued against a  
28 party, a party’s attorney, or both. Fed. R. Civ. P. 37(a)(5). The Court therefore has authority under

1 Rule 37 to award fees against a party and its counsel jointly and severally. *See, e.g., Toth v. Trans*  
2 *World Airlines, Inc.*, 862 F.2d 1381, 1387 (9th Cir. 1988). Responsibility may fall to both the party  
3 and counsel jointly and severally when it is unclear from the record which is less blameworthy than  
4 the other. *Nationstar Mortg., LLC v. Flamingo Trails No. 7 Landscape Maint. Ass'n*, 316 F.R.D.327  
5 (D. Nev. 2016). Nonetheless, sanctions against counsel are a step too far for this Court to take.  
6 There is nothing that Defendant presents showing that Plaintiff's counsel is responsible for Plaintiff's  
7 delay in producing discovery documents. For this reason, the Court awards sanctions against  
8 Plaintiff only.

9 **II. ORDER**

10 Accordingly,

11 IT IS HEREBY ORDERED that the Memorandum of Fees in Support of Award of Sanctions  
12 Under Fed. R. Civ. P. 37 (ECF No. 51) is GRANTED in the amount of \$6,978.50.

13 IT IS FURTHER ORDERED that Plaintiff shall pay this amount to Defendant's Counsel  
14 within thirty (30) days of the date of this Order.

15 Dated this 15th day of July, 2021.

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ELAYNA J. YOUCRAH  
UNITED STATES MAGISTRATE JUDGE

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